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Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-5689

WILLIAM PERRY,

Petitioner,

against

JAMES M. MORRISSEY, JOSEPH PADILLA, RALPH IBRAHIM, Individually and on Behalf of the Members of the NATIONAL MARITIME UNION OF AMERICA, ABRAHAM E. FREEDMAN, MARTIN E. SEGAL, and LEON KARCHMER,

Respondents.

BRIEF FOR RESPONDENTS MORRISSEY, PADILLA AND IBRAHIM IN OPPOSITION TO THE PETITION FILED BY WILLIAM PERRY

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Preliminary Statement

Messrs. Curran and Wall are adverse to Mr. Perry in the legal sense (See Plaintiffs' brief in opposition to Freedman petition for a writ of certiorari (No. 73-478), pp. 1-2) but have not been named as respondents or made parties. Obviously Perry knows they are not opposed to his keeping the $222,200 he unlawfully received from the Officers' Fund.

The Question Really Presented Is:

Was the district court justified in entering a judgment against William Perry, a non-elected officer, for the amount he had unlawfully received from the Officers' Fund?

I

Mr. Perry erroneously states (Perry petition, p. 6), "This Court denied a petition for certiorari sought by certain of the defendants (other than this petitioner) to review that decision 400 U.S. 826 (1970) 399 U.S. 928 (1970)." Mr. Perry was indeed a petitioner for a writ on that occasion. His petition was denied by this Court.

II

Mr. Perry (Perry petition, pp. 10 *et seq.*) has confused his position with that of the other defendants. He was the one who had the money which was unlawfully paid to him. There could be no doubt that the Officers' Fund had a right to a judgment against him for the amount received. On the other hand the trustees had a right to attempt to show that they had acted in good faith in making such payment.

III

The argument (Perry petition, p. 16) that the Court of Appeals "appeared to be too involved in the intricate 'labor question' and simply overlooked Perry's due process appeal" is particularly uninviting because of the fact that Perry's motion for a reargument was granted. He was not overlooked. If anything, he received special consideration.

IV

Mr. Perry argues that he did not owe a fiduciary duty to the Officers' Plan (Perry petition, p. 21). This argument was raised in the Freedman petition (73-478) and answered

fully in our brief in opposition to Mr. Freedman, pp. 8-9. The Officers' Fund is a union fund. It is comprised entirely of union funds and only union funds.

Respectfully submitted,

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